
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

DONALD FOSTER, §
§
Petitioner, §
§
versus § CIVIL ACTION NO. 1:05-CV-145
§
DIRECTOR, TDCJ-CID, §
§
Respondent. §

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Donald Foster, an inmate confined at the Ellis I Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends denying respondent's motion to dismiss the petition as successive.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. Petitioner appears to be confused as to the magistrate judge's recommendation. Petitioner argues that his petition should not be dismissed as successive, but the magistrate judge did not recommend that the petition be dismissed.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. Respondent's motion to dismiss (#9) is **DENIED**. Respondent shall file a supplemental response to the petition within thirty days of the date of this memorandum order.

SIGNED at Beaumont, Texas, this 14th day of November, 2006.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE